IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4041 OF 2001

Bhagwat Yadavrao Chaudhari)
of Nashik, Indian Inhabitant,)
residing at Maniprabha, Near)
P & T Mahindra Colonies, Trimbak)
Road, Nasik - 422 005.)... Petitioner.

Versus

1) The Government of Maharashtra)
Through its Secretary,)
School Education Department,)
Mantralaya, Mumbai-400 032.)
2) The Dy.Director of Education,)
Nashik Division, Gole Colony,)
Nashik-2.)
3) Education Officer (Secondary))
Zilla Parishad, Nashik.)
4) Boys' Town Public School,)
Through Managing Committee,)
P. N. Mehta Education Trust)
(Regd.), Trimbak Road, Nasik)
422 007. ... ...)... Respondents.

Mr. Anil S. Kadam for Petitioner.

Mr. S.R.Nargolkar, AGP for Respondent Nos.1 to 3.

Mr. M. S. Patil for Respondent No.4.

CORAM : V.G. PALSHIKAR, and

V.R.KINGAONKAR, JJ.

DATED : 3RD MARCH, 2006.

JUDGMENT (Per : V.R.KINGAONKAR, J.):

By this petition, the Petitioner, who was non-teaching staff member of Respondent No.4 School, seeks to assail administrative action of Respondent No.1 to exclude period between 1st April, 1962 to 31st July, 1980 from counting as his qualified service for the purpose of pension.

2. The Petitioner was appointed as a Junior Clerk in Respondent No.4 School on 1st June, 1955. It is a public school having facility of boys' hostel. The non-teaching staff members were brought under Secondary School Code which became applicable from April, 1962 onwards. Under relevant rules, for strength of 500 students 1 Junior Clerk could be appointed as per the norms of staffing pattern. There were 2 Junior Clerks working in Respondent No.4 School

at the relevant time. Respondent Nos.1 and 2 stopped payment of grant-in-aid towards the salary of Petitioner who was found to be in excess as per the norms. He was, therefore, shifted to boys' hostel by the management of Respondent No.4 and started working there from 4th April, 1962. He was lateron absorbed in the services of Respondent No.4 School again on 1st August, 1980 when the strength of students was increased over and above 500. He retired as such on 30th November, 1988. His claim for pension was not favourably considered inspite of various representations. Eventually, Respondent No.1 issued resolution dated 15th June, 2001 and allowed pensionary benefits to the Petitioner excluding the period served by him on establishment of Boys' Hostel for which his pay was drawn from funds of Respondent No.4.

3. Feeling aggrieved, the Petitioner has impugned such administrative decision and the letter dated 15th June, 2001 whereby the relevant period is treated as his unqualified service.

4. Respondent No.1 has come out with a case that the Government had introduced the Secondary School Code for effective functioning of the private schools and

Respondent No.4 was required to follow the norms of staffing pattern. It is contended that under provisions of Rule 57.5 of the Secondary School Code only 1 Jr. Clerk could be held eligible for salary grant and the services of the Petitioner could not be regarded as a qualifying service for the period which he had spent as an employee attached to the boys' hostel. It is contended that Respondent No.4 has rightly excluded the period from 1st April, 1962 upto 31st July, 1980 by treating it as a break in service and Petitioner cannot claim pensionary benefits for the relevant period.

5. We have heard learned Counsels for the parties. The only question for consideration is whether the period of service for which the Petitioner was not working as a Jr. Clerk on establishment of Respondent No.4 School and was attached to the establishment of boys' hostel of the School can be regarded as his "qualifying service" for pensionary benefits.

6. On behalf of the Petitioner, learned Counsel argued that the earlier staffing pattern could not be dis-regarded since it was approved before 1st June, 1962. The Petitioner has not produced any record to show that the staffing pattern of non-teaching staff

members of Respondent No.4, which existed before 1st June, 1963, was approved at any point of time by the Respondent No.1. The Secondary Schools in the State of Maharashtra were being provided grant-in-aid after the grant-in-aid Code for Schools and Colleges was made applicable. Respondent No.1 had stopped payment of grant-in-aid for the 2nd post of junior clerk which was held by the Petitioner since the strength of students was less than 500 as on 1st April, 1962. It was due to the lack of approval to his post and non-availability of grant-in-aid, that Respondent No.4 transferred his services as junior clerk to the boys' hostel. Obviously, his monthly pay from 1st April, 1962 was drawn from the private funds of Respondent No.4 school without use of grant-in-aid provided by Respondent No.1. His appointment was continued upto 31st July, 1980 and he was re-appointed as junior clerk of Respondent No.4 School when the students' strength was more than 500. The relevant period was actually treated as break-in-service when the case of the Petitioner was considered by Respondent No.1 and he was denied pensionary benefits.

7. On perusal of the letter dated 15th June, 2001 issued by Respondent No.1 (Exhibit "C" to the Petition), it is conspicuous that the period of

break-in-service between 1st April, 1962 till 31st July, 1980 was condoned though it is treated as unqualified service and for remaining period his service was treated as qualifying service for pensionary benefits. It is well settled that actual period of service has to be counted as qualifying service. The pensionary benefits cannot be availed as a matter of right unless the service period is treated as continuous and qualifying service. The Petitioner was not approved junior clerk, particularly, on establishment of Respondent No.4 - School during 1st April, 1962 upto 31st July, 1980 and for his own benefit and convenience of Respondent No.4, his services were diverted to the boys' hostel and he was paid salary from the funds of Respondent No.4. However, that does not give him right to claim continuation in service on establishment of Respondent No.4 as a junior clerk of the School and in any case as a non-teaching staff covered by grant-in-aid scheme. Consequently, we find no substantial error committed by Respondent No.1. There is no substance in the petition.

8. In the result, the petition fails and is accordingly dismissed. Rule discharged. There shall be no order as to costs.

Sd/-

(V.G.PALSHIKAR, J.)

Sd/-

(V.R.KINGAONKAR, J.)